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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Eric M Larson, et al.,

10 Plaintiffs,

11 v.

12 State Farm Fire and Casualty Company, et  
13 al.,

14 Defendants.

No. CV-21-02221-PHX-JAT

**ORDER**

15 Pending before the Court is Plaintiffs Courtney and Eric Larson's ("Plaintiffs")  
16 Motion to Remand. (Doc. 11). Defendant State Farm Fire and Casualty Company  
17 ("Defendant") filed a Response, (Doc. 12), and Plaintiffs filed a Reply. (Doc. 17). For the  
18 reasons that follow, the Court grants Plaintiffs' Motion to Remand.

19 **I. BACKGROUND**

20 Plaintiffs are Arizona homeowners insured by Defendant. (Doc. 11 at 3). On  
21 December 1, 2019, Plaintiffs noticed water leakage in their kitchen. (Doc. 6 at 2). Plaintiffs  
22 reported a claim to Defendant, and Defendant conducted an inspection, found the damage  
23 to be of a type excluded from coverage, and denied Plaintiffs' claim. (*Id.*)

24 Plaintiffs then appointed an appraiser who estimated \$46,866.62 in damage to  
25 Plaintiffs' home. (Doc. 11-1 at 2). The parties dispute whether this appraisal bound  
26 Defendant to award Plaintiffs the appraisal value. (*Compare* Doc. 6 at 2 *with* Doc. 11 at 3).  
27 Notwithstanding this dispute, Defendant covered a portion of the damage to Plaintiffs'  
28 home, but not the full value that the appraiser estimated. (*Id.*)

1 Plaintiffs filed suit in Maricopa County Superior Court on December 6, 2021,  
2 alleging three counts against Defendant. Count One alleges a breach of insurance contract,  
3 seeking to recover the remainder of Plaintiffs' insurance claim and associated costs  
4 incurred from the lack of coverage. (Doc. 1 at 15). Count Two alleges a breach of implied  
5 covenant of good faith and fair dealing. (*Id.* at 16). Count Three calls for punitive damages  
6 for Defendant's "outrageous, reprehensible, . . . willful[], malicious[]" conduct. (*Id.* at 18).

7 Defendant timely removed this action pursuant to 28 U.S.C. § 1441. (Doc. 1). Per  
8 the Court's order, Defendant then filed a supplement to the notice of removal asserting  
9 diversity of citizenship as the basis for federal subject matter jurisdiction. (Doc. 5; Doc. 6).  
10 Defendant alleges that Plaintiffs are Arizona residents and Defendant is incorporated and  
11 has its principal place of business in Illinois, satisfying the diversity of citizenship  
12 requirement. (Doc. 6 at 3). Defendant also alleges that the amount in controversy  
13 requirement of at least \$75,000 is satisfied.

14 Plaintiffs filed a motion to remand on January 28, 2022, arguing that the Court does  
15 not have subject matter jurisdiction. (Doc. 11). While they do not contest that the parties  
16 are citizens of different states for purposes of diversity jurisdiction, Plaintiffs argue that the  
17 amount in controversy does not exceed \$75,000. Defendant objects to this motion. (Doc.  
18 12).

## 19 **II. MOTION TO REMAND**

20 The parties do not contest that they are citizens of different states for purposes of  
21 diversity jurisdiction. Thus, the Court only analyzes whether Defendant has failed to show  
22 by a preponderance of the evidence that Plaintiffs' amount in controversy exceeds \$75,000.

### 23 **A. Legal Standard**

24 Pursuant to 28 U.S.C. § 1332, "district courts shall have original jurisdiction of all  
25 civil actions where the matter in controversy exceeds the sum or value of \$75,000,  
26 exclusive of interests and costs, and is between . . . citizens of different States[.]" 28 U.S.C.  
27 § 1332(a)(1).

28 The removal statute, 28 U.S.C. § 1441, provides, in pertinent part: "[A]ny civil

1 action brought in a State court of which the district courts of the United States have original  
 2 jurisdiction, may be removed by the defendant . . . to the district court of the United States  
 3 for the district and division embracing the place where such action is pending.” 28 U.S.C.  
 4 § 1441(a). Courts strictly construe the removal statute against removal jurisdiction. *See*  
 5 *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09 (1941); *Gaus v. Miles, Inc.*,  
 6 980 F.2d 564, 566 (9th Cir. 1992). “The ‘strong presumption’ against removal jurisdiction  
 7 means that the defendant always has the burden of establishing that removal is proper.”  
 8 *Gaus*, 980 F.2d at 566 (citing *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064  
 9 (9th Cir. 1979)).

10 “In a removed case, . . . the plaintiff chose a state rather than federal forum. Because  
 11 the plaintiff instituted the case in state court, ‘there is a strong presumption that the plaintiff  
 12 has not claimed a large amount in order to confer jurisdiction on a federal court[.]’” *Singer*  
 13 *v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 375 (9th Cir. 1997) (quoting *St. Paul*  
 14 *Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 290 (1938)). “Where the complaint  
 15 does not demand a dollar amount, the removing defendant bears the burden of proving by  
 16 a preponderance of the evidence that the amount in controversy exceeds [\$75,000].” *Id.* at  
 17 376. “Under this burden, the defendant must provide evidence establishing that it is ‘more  
 18 likely than not’ that the amount in controversy exceeds [\$75,000].” *Sanchez v. Monumental*  
 19 *Life Insurance Co.*, 102 F.3d 398, 404 (9th Cir. 1996). “[R]emoval ‘cannot be based simply  
 20 upon conclusory allegations’ where the [complaint] is silent” as to the dollar amount of  
 21 damages the plaintiff seeks. *Singer*, 116 F.3d at 377 (citing *Allen v. R & H Oil & Gas Co.*,  
 22 63 F.3d 1326, 1335 (5th Cir. 1995)). Yet the inquiry into the amount in controversy is not  
 23 confined to the face of the complaint. *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th  
 24 Cir. 2004).

## 25 **B. Analysis**

26 The amount in controversy is not facially clear from Plaintiffs’ complaint.  
 27 Accordingly, it is Defendant’s burden to prove by a preponderance of the evidence that the  
 28 amount in controversy exceeds \$75,000. *See Singer*, 116 F.3d at 376. Here, the Court finds

1 that Defendant has not met its burden.

## 2 **1. Plaintiffs' Tier Two Designation**

3 Defendant argues that Plaintiffs' Tier Two discovery designation indicates that the  
4 amount in controversy exceeds \$75,000. (Doc. 6 at 4). This argument is unavailing.

5 Arizona's tier system is used for discovery purposes—"to make discovery occur in  
6 a manner that is proportional" to the complexity of the case. *See* Advisory Committee Note,  
7 Ariz. R. Civ. P. 26.2. Therefore, "while Plaintiff[s'] tier selection is some evidence of  
8 [their] amount in controversy, it is not enough to prove by a preponderance of the evidence  
9 that Plaintiff[s'] damages in the action exceed \$75,000." *Rieke v. ManhattanLife Assurance*  
10 *Co. of Am.*, No. CV-20-00724-PHX-GMS, 2020 WL 3056123, at \*1 (D. Ariz. June 9,  
11 2020).

12 Moreover, Tier Two designations merely contemplate a claim for damages  
13 exceeding \$50,000 and less than \$300,000. Ariz. R. Civ. P. 26(c)(3)(B). Thus, Plaintiffs'  
14 tier designation "'does nothing more than establish that the amount in controversy is likely  
15 more than \$50,000.'" *Rives v. Mrs. Gooch's Nat. Food Mkts. Inc.*, No. CV-21-01186-PHX-  
16 DLR, 2021 WL 3847104, at \*1 (D. Ariz. Aug. 27, 2021) (quoting *Ferguson v. First Am.*  
17 *Specialty Ins. Co.*, No. CV-09-01581-PHX-JAT, 2009 WL 4154653, at \*3 (D. Ariz. Nov.  
18 23, 2009)). Accordingly, Plaintiffs' tier designation alone is insufficient to demonstrate  
19 that the amount in controversy exceeds \$75,000.

## 20 **2. Plaintiffs' Settlement Negotiations**

21 Defendant next argues that Plaintiffs' settlement offer proves that the amount in  
22 controversy requirement is met. Defendant argues that Plaintiffs previously asserted that  
23 Count One alone was worth \$72,500, implying that the total amount in controversy on all  
24 claims would exceed \$75,000. (Doc. 12 at 5–6).

25 The Court may consider this correspondence as some evidence of the amount in  
26 controversy. *See Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018).  
27 But, for reasons stated below, the Court finds this evidence unpersuasive because an  
28 estimated value of \$72,500 for Count One alone does not reflect a reasonable estimate of

1 Plaintiffs' Count One claim. Additionally, the Court finds that Plaintiffs' "opening  
2 demands" do not accurately reflect the amount in controversy when Plaintiffs later offered  
3 to settle for a lower amount. *See Carr v. Esurance Ins. Co.*, No. 09-0667-PHX-JAT, 2009  
4 WL 2132699, at \*3 (D. Ariz. July 16, 2009) ("The fact that the amount was an 'opening  
5 demand' and subject to lower counteroffers further undermines Defendant's argument [that  
6 the initial amount reflects the amount in controversy].").

7 On the other hand, the Court finds that Plaintiffs' settlement offer of \$66,500  
8 (\$31,000 in policy benefits and \$12,500 in attorneys' fees for Count One, and \$23,000 for  
9 extra-contractual claims in Counts Two and Three) is relevant evidence that Plaintiffs  
10 believe the amount in controversy is less than \$75,000. "A settlement letter is relevant  
11 evidence of the amount in controversy if it appears to reflect a reasonable estimate of the  
12 plaintiff's claim." *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002); *see also Rieke*,  
13 2020 WL 3056123, at \*2 (finding plaintiff's offer of judgment for \$65,000 to be relevant  
14 evidence of the amount in controversy); *Brown v. Bankers Life & Cas. Co.*, No. CV-09-  
15 1459-PHX-GMS, 2009 WL 2914215, at \*4 (D. Ariz. Sept. 8, 2009) (finding plaintiff's  
16 offer of judgment for \$70,000 to be relevant evidence of the amount in controversy).

17 Plaintiffs' Count One settlement offer is for \$31,000 in policy benefits and \$12,500  
18 in attorneys' fees. In Count One, Plaintiffs claim that Defendant "wrongfully deducted a  
19 total of \$31,695.40 awarded as water damage." (Doc. 11 at 3). Thus, the Court finds that  
20 Plaintiffs' settlement offer of \$43,500 for Count One more closely reflects "a reasonable  
21 estimate of plaintiff[s'] claim[s]." *Cohn*, 281 F.3d at 840. Accordingly, the Court finds that  
22 Defendant has not sufficiently demonstrated that Plaintiffs' assertion that Count One was  
23 worth \$72,500 is relevant evidence for the total amount in controversy.

24 The Court is similarly unpersuaded that Counts Two and Three show that Defendant  
25 has satisfied its burden in meeting the amount in controversy requirement. Defendants  
26 argue that Plaintiffs' Complaint alleges facts analogous to previous cases in which the  
27 amount in controversy exceeded \$75,000. (Doc. 12 at 7–9).

28 The Ninth Circuit Court of Appeals has found that a removing defendant may point

1 to verdicts and settlements in “similar” cases as evidence that the amount in controversy  
 2 exceeds \$75,000. *See Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005). What  
 3 constitutes a sufficiently “similar” case is not clear from precedent, so courts must exercise  
 4 their discretion. *See Haire v. Liberty Ins. Corp.*, No. CV-20-00686-PHX-DWL, 2020 WL  
 5 5088071, at \*4 (D. Ariz. Aug. 28, 2020).

6 In its response, Defendant focuses much of its analysis on *Hawkins v. Allstate Ins.*  
 7 *Co.*, 733 P.2d 1073 (Ariz. 1987), a case in which insureds brought claims of bad faith  
 8 against their insurer and obtained a \$3.5 million jury verdict. (Doc. 12 at 7–9). Defendant  
 9 points to similarities between the facts that led to the jury verdict in *Hawkins* and the facts  
 10 that Plaintiffs allege here. (*Id.*) But *Hawkins* differs from the present case in a crucial way:  
 11 the plaintiffs in *Hawkins* never offered to settle their bad faith claims for a specified dollar  
 12 amount. *See generally Hawkins*, 733 P.2d 1073. Here, Plaintiffs explicitly offered to settle  
 13 Counts Two and Three for \$23,000. (*See* Doc. 11 at 9). Thus, the Court finds that *Hawkins*  
 14 and the other cases cited by Defendant<sup>1</sup> are not sufficiently “similar” to the present case to  
 15 be persuasive to use to find an amount in controversy exceeding \$75,000.

16 For the foregoing reasons, Defendant has not met its burden of establishing by a  
 17 preponderance of the evidence that the amount in controversy exceeds the \$75,000  
 18 jurisdictional requirement. Plaintiffs’ Motion to Remand is granted.

### 19 **III. ATTORNEYS’ FEES**

20 Plaintiffs request attorneys’ fees for Defendant’s removal. The Court may award  
 21 attorneys’ fees “where the removing party lacked an objectively reasonable basis for  
 22 seeking removal. Conversely, when an objectively reasonable basis exists, fees should be  
 23 denied. *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005).

24 Although the Court grants Plaintiffs’ Motion to Remand, the Court does not find  
 25 award of attorneys’ fees proper here. Defendant had an objectively reasonable argument

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26  
 27 <sup>1</sup> In its previously filed Supplement to Notice of Removal, Defendant cites several other  
 28 cases that Defendant argues are similar to the present case. (Doc. 6 at 12–15). While these  
 cases may have some analogous facts to Plaintiffs’ allegations, none of the cases include  
 an explicit offer to settle all claims for less than \$75,000. (*Id.*) Accordingly, the Court finds  
 that none of these other cases are sufficiently similar to be persuasive.

1 for removal. The complaint does not request a specific amount of damages and it is  
2 objectively reasonable to argue that attorneys' fees and punitive damages from Plaintiffs'  
3 claims satisfy the jurisdictional requirements. *See Welsh v. N.H. Ins. Co.*, 843 F. Supp. 2d  
4 1006, 1011 (D. Ariz. 2012) (finding the same). Therefore, Plaintiffs' request for attorneys'  
5 fees is denied.

6 **IV. CONCLUSION**

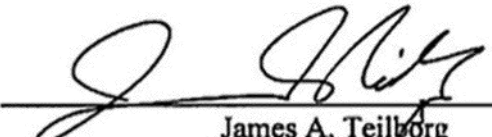
7 Defendant fails to establish by a preponderance of the evidence that Plaintiffs'  
8 amount in controversy exceeds \$75,000.

9 For the foregoing reasons,

10 **IT IS ORDERED** that Plaintiffs' request for attorneys' fees (Doc. 11) is **DENIED**.

11 **IT IS FURTHER ORDERED** that Plaintiffs' Motion to Remand (Doc. 11) is  
12 **GRANTED**. The Clerk of Court shall remand this case to the Maricopa County Superior  
13 Court, without further order of this Court.

14 Dated this 12th day of April, 2022.

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James A. Teilborg  
Senior United States District Judge